

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION



IN THE MATTER OF:)	Application for Ex Parte
)	Administrative Warrant for
Loewenthal Metals Site)	Entry, Inspection, and Sampling
)	pursuant to Section 104(e) of
947 West Cullerton Street)	the Comprehensive Environmental
Chicago, Cook County, Illinois)	Response, Compensation, and Liability
)	Act, 42 U.S.C. § 9604(e).
)	
)	Civil Docket No.

12M671

**APPLICATION FOR EX PARTE ADMINISTRATIVE
WARRANT FOR ENTRY, INSPECTION AND SAMPLING**

The Regional Administrator of the United States Environmental Protection Agency (U.S. EPA), Region 5, by Gary S. Shapiro, Acting United States Attorney for the Northern District of Illinois, hereby applies for an ex parte warrant to allow her authorized representatives, including but not limited to U.S. EPA contractors, to enter, inspect, photograph, and take samples from the property owned and/or controlled by Mr. James Connell and located at 947 West Cullerton Street, parcel number 17-20-433-003-000 Cook County, Chicago, Illinois ("the Loewenthal Metals Site," or "Site")(parcel number 17-20-433-003-000 also contains the address commonly known as 2006 South Sangamon Street, Chicago Illinois, which intersects West Cullerton Street at the location identified above). The reasons supporting this request follow.

1. Introduction

Beginning in the 1940's, the Loewenthal Metals Corporation owned and operated a lead and zinc smelter and scrap metal facility at 947 West Cullerton Street in Chicago (the "Site") in a mostly residential neighborhood. Declaration of Steven Faryan, Exhibit 1, ¶ 8. The Site is approximately .42 acres and it is presently vacant except for a concrete slab on a portion of the property. *Id.*

Directly across the street from the Site is a residential apartment complex. *Id.* Railroad tracks border the east side of the property, which separate the Site from residential homes. *Id.*

In 2006, at U.S. EPA's request, the Illinois Environmental Protection Agency ("Illinois EPA") performed an assessment of the Site to determine whether it should be placed in the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS"), which is a U.S. EPA-maintained database of locations where environmental contamination may be present. *Id.* at ¶ 7. According to the report, soil samples were taken at the Site from 12 random locations that revealed elevated levels of lead, arsenic, copper, manganese and zinc in concentrations three times above the background limitations. *Id.* at ¶ 9.

The 2006 Illinois EPA assessment also noted that site access was uncontrolled and that the Site apparently was being used as a shortcut for children and adults walking to a nearby public school. *Id.* The assessment also noted open dumping on the property, and that transient people erected a temporary shelter at the Site. *Id.* The absence of any fences, signs or sidewalk, the appearance of routine trespass, the residential nature of the area, and the presence of elevated levels of metals in soils create a high potential risk for human receptors, particularly children, to come in contact with lead, arsenic and other heavy metals. *Id.* U.S. EPA therefore concluded that there is a need to further assess the Site to determine whether a response action under CERCLA is appropriate. *Id.*

Accordingly, U.S. EPA now seeks a warrant for access to the Site for the following purposes:

- (1) Conduct a visual inspection of the property;
- (2) Take photographs of the property; and

(3) Take surface and depth samples of Site soils using a “Geoprobe” device pursuant to a Site-specific sampling plan and grid to a depth of six feet.

U.S. EPA expects that it will take approximately five days to complete the response actions described above. *Id.* at ¶¶ 13, 17. Since the Site is presently vacant, no interference with private business activities is anticipated. The samples taken from the Site would be submitted for analysis, and the analytical results would be evaluated in connection with the other Site-related information to determine whether further response action at the Site is required. *Id.* at ¶ 11. In the event U.S. EPA determines that further response action is required, it will seek a second warrant for access to complete those actions, if needed.

As described more fully below, U.S. EPA seeks a warrant for access because: (1) entry onto the property to sample and inspect whether contamination is located there requires consent from the property owner or a warrant ordering access, and (2) while U.S. EPA has made numerous attempts to gain consent for access, consent has not been given to allow U.S. EPA on the property to conduct its investigation. The sampling and inspection will be conducted pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9604(e), and *Marshall v. Barlow’s, Inc.*, 436 U.S. 307 (1978).

2. Current Ownership of the Site and Access Attempts

Beginning in January 2012, U.S. EPA undertook efforts to determine the identity of the Site’s current owner and to obtain his or her consent prior to entry. Faryan Declaration, ¶ 11, Exhibit 1; Declaration of Maureen E. O’Neill, ¶¶ 4, 5, Exhibit 2. In particular, as set forth in the accompanying declaration of U.S. EPA’s civil investigator Maureen E. O’Neill, public records available identify the owner as Mr. James Connell. O’Neill Declaration, ¶ 5, Exhibit 2.

On April 19, 2012, in an attempt to gain consent for access, U.S. EPA sent letters to Mr. Connell by certified mail, using his last known home addresses in Chicago, Illinois, requesting access to conduct a visual inspection of the property, to take photos, and to take soil samples, and providing a standard Consent to Access form. Faryan Declaration, ¶ 12, Exhibit 1. U.S. EPA supplied contact information and requested a response by no later than May 7, 2012. *Id.* No response was received from Mr. Connell. *Id.*

3. Statutory Background

Congress enacted CERCLA in response to widespread concern over the serious environmental and health hazards posed by industrial pollution. *See United States v. Bestfoods*, 524 U.S. 51, 55 (1998). CERCLA's purpose "is to facilitate the prompt clean-up of hazardous waste sites." *In re Bell Petroleum Servs., Inc.*, 3 F.3d 889, 894 (5th Cir. 1993). To further that purpose, Congress provided U.S. EPA with "the authority and the funds necessary to respond expeditiously to serious hazards without being stopped in its tracks by legal entanglement before or during the hazard clean-up." *Boarhead Corp. v. Erickson*, 923 F.2d 1011, 1019 (3rd Cir. 1991); *see also J.V. Peters & Co., v. Administrator, EPA*, 767 F.2d 263 (6th Cir. 1985). One of the agency's tools for a prompt and effective response action is the access and information gathering authority of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), provides EPA with broad access authority in order to effectuate the purposes of CERCLA, and includes access for sampling and inspection activities described above. Specifically, CERCLA provides that any officer, employee, or representative of U.S. EPA is authorized to take actions, including sampling and inspection, "at a vessel, facility, establishment, place, property, or location" if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. 42

U.S.C. § 9604(e)(1). CERCLA further provides that any officer, employee, or representative of U.S. EPA is authorized to enter at reasonable times any “vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title,” and is further authorized to inspect and obtain samples from any such location or property. 42 U.S.C. § 9604(e)(3) - (4).

If consent is not granted regarding any request made by an officer, employee, or representative of U.S. EPA, the Agency may issue an order directing compliance with the request and ask the Attorney General to commence a civil action to compel compliance with a request or order for access. 42 U.S.C. § 9604(e)(5). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, in the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 42 U.S.C. § 9604(e)(5)(B)(I).

4. Legal Standards

Under section 104(e) of the CERCLA, a court may issue an administrative warrant for access and entry where “there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant.” 42 U.S.C. § 9604(e)(5)(B); *United States v. Tarkowski*, 248 F.3d 596, 599 (7th Cir. 2001); *United States v. Fisher*, 864 F.2d 434, 438 (7th Cir. 1988); *United States v. Mountaineering Ref. Co.*, 886 F. Supp. 824, 828 (D. Wyo. 1995). This standard is sufficient to ensure that “[t]he decision to enter and inspect [is not] the product of the unreviewed discretion of the enforcement officer in the field.” *See v. City of Seattle*, 387 U.S. 541, 545 (1967).

As the Supreme Court makes clear, the standard for issuing an administrative warrant is less than the probable cause standard in a criminal case: “[P]robable cause in the criminal sense is not required. For purposes of an administrative search such as this, probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular establishment.” *Marshall*, 436 U.S. at 320 - 21.

5. The Warrant Requirements Under CERCLA Are Satisfied

The standard for U.S. EPA to obtain an administrative warrant under CERCLA section 104(e) is not difficult to meet. *Tarkowski*, 248 F.3d at 599 (“[t]he requirement for reasonable basis is easily satisfied”), *Fisher*, 864 F.2d at 438 (the standard is “undemanding”). U.S. EPA need only show that its “demand for access, grounded in ‘a reasonable basis to believe there may be a release or threat of release of a hazardous substance,’ is not ‘arbitrary and capricious, an abuse of discretion,’ or otherwise illegal.” *Fisher*, 864 F.2d at 438; *United States v. Tucard, LLC*, No. 10-11185-JLT, 2010 WL 3621516, at * 2 (D. Mass. Sept. 15, 2010). Furthermore, U.S. EPA need not prove that any minimum amount of hazardous substances have been, or are threatened to be, released. *Mountaineering Ref. Co.*, 886 F. Supp. at 828; *Tarkowski*, 248 F.3d at 599 (“there is nothing in section 104(e)(1) about magnitude”).

Here, the conditions at the Site easily meet the requirement that U.S. EPA have a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant or contaminant. In 2006, the Illinois EPA performed an assessment of the Site and found elevated levels of lead, arsenic, copper, manganese and zinc, all of which are a hazardous substance, pollutant or contaminant, in concentrations three times above the background limitations. Faryan Declaration, ¶ 9, Exhibit 1. The Illinois EPA 2006 assessment also noted that site access was uncontrolled, and

that the Site was used as a shortcut for children and adults walking to a nearby public school. *Id.* The assessment also noted that transient people may have erected a temporary shelter at the Site. *Id.* The absence of any fences, signs or sidewalk, the residential nature of the area, the appearance of routine trespass, and the presence of elevated levels of heavy metals, including lead and arsenic, in soils created the potential risk for human receptors, particularly children, to come in contact with lead and other heavy metals. *Id.* U.S. EPA therefore easily has a reasonable basis to believe that there is a release or threat of release of a hazardous substance, pollutant or contaminant at the Site.

In *Tarkowski*, a rare case where access was denied, the U.S. EPA sought a court order allowing access to conduct further sampling and to conduct a cleanup, which was not supported by the sampling evidence. The court denied U.S. EPA's request for access as the request to conduct the cleanup was too broad. The facts supporting the reasonableness of the U.S. EPA's request in this case are far different than those in *Tarkowski*. Here, the U.S. EPA is only seeking access to conduct an investigation to determine whether further response action is warranted. Specifically, U.S. EPA requests access only to investigate the Site by (1) conducting a visual inspection of the property; (2) taking photographs of the property; and (3) taking surface and depth samples of Site soils using a "Geoprobe" pursuant to a Site-specific sampling plan and grid to determine whether contamination is present which poses a threat of a release of a hazardous substance within the meaning of CERCLA Sections 101(22) and 104(e), 42 U.S.C. §§ 9601(22) and 9604(e). *Id.* at ¶¶ 13, 14. In the event contamination is found that requires remediation, U.S. EPA will seek a second warrant for access to conduct that remediation. Under these circumstances, the principles set forth in *Tarkowski* firmly support issuing the requested administrative warrant.

Furthermore, unlike *Tarkowski*, here there is virtually no uncertainty regarding the activities for which U.S. EPA is seeking access. U.S. EPA has inspected similar sites for the same type of

contaminants many times in the past. *Id.* at ¶ 10. U.S. EPA plans to inspect the Site in the same way as it inspected other vacant former industrial sites to identify whether the Site is contaminated. *Id.* In other words, the uncertainty surrounding U.S. EPA's planned response action in *Tarkowski* is not present in this case, since U.S. EPA has in the past inspected several sites similar to this site.

For the reasons set forth above, U.S. EPA has concluded that there is a reasonable basis to believe there may be an actual release or a threat of such release into the environment within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. § 9601(8) and (22). Therefore, there is a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1) for which U.S. EPA wants to determine whether the Site poses an imminent and substantial endangerment to human health and the environment such that sampling and inspection actions are required.

After the U.S. EPA makes the required showing of a reasonable basis for believing there may be a release or threat of release of a hazardous substance, pollutant or contaminant, a court may issue a warrant *ex parte* to enforce U.S. EPA's statutory right of entry under CERCLA. *Bunker Hill Co. Lead and Zinc Smelter v. U.S. EPA*, 658 F.2d 1280 (9th Cir. 1981); *In re Alameda County Assessor's Parcel Nos. 537-801-2-4 and 537-850-9*, 672 F. Supp. 1278, 1287 (N.D. Cal. 1987) (in both cases *ex parte* warrants were issued to U.S. EPA to perform inspections under other federal environmental statutes, based on showings of reasonable cause to believe that violations of those statutes had occurred or would occur). Agencies may obtain administrative inspection warrants *ex parte* even when surprise is not necessary. *Bunker Hill Co.*, 658 F.2d at 1285.

Despite U.S. EPA's efforts to obtain consent for access from the Site owner, no consent was obtained. The activities that U.S. EPA intends to perform during this response action are estimated

to take approximately five days. Sampling will not disrupt or otherwise affect the property owner since the property is vacant.


6. Conclusion

For the reasons set forth above, and for the reason set forth in the attached declarations, U.S. EPA requests that this Court issue an administrative warrant that allows U.S. EPA and U.S. EPA's authorized representatives to enter the Site to conduct the sampling and inspection actions described in this Application, in accordance with Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). A draft Administrative Warrant for entry, Inspection and Sampling in connection with the Site is attached as Attachment A.

Respectfully submitted,

GARY S. SHAPIRO
Acting United States Attorney

By:


KURT N. LINDLAND
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-4163
kurt.lindland@usdoj.gov

EXHIBITS

1. Declaration of Steven Faryan
2. Declaration of Maureen O'Neill

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE MATTER OF:)	Application for Ex Parte
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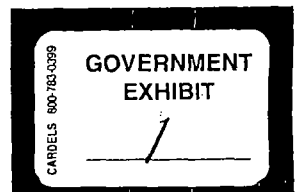
DECLARATION OF STEVEN FARYAN

I, Steven Faryan, declare and state as follows:

1. I am currently employed as an On-Scene Coordinator in the Superfund Division of Region 5 of the United States Environmental Protection Agency ("U.S. EPA") in its Chicago, Illinois offices. I have been employed with U.S. EPA as an On-Scene Coordinator since July 17, 1986.

2. The statements in this declaration are based on my personal knowledge, my experience as an On-Scene Coordinator for U.S. EPA, and my knowledge from reviewing a "Pre-CERCLIS Screening Action Report" prepared and submitted by the Illinois Environmental Protection Agency dated August 31, 2006, (the Illinois EPA Screening Report") regarding the property located at 947 West Cullerton Street, parcel number 17-20-433-003-000 Cook County, Chicago, Illinois ("the Loewenthal Metals Site," or "Site")(parcel number 17-20-433-003-000 also contains the address commonly known as 2006 South Sangamon Street, Chicago Illinois, which intersects West Cullerton Street at the location identified above).

3. My education includes a Bachelor of Arts in Biological Sciences from Southern Illinois University in May of 1981. Between 1981 through 1986, I was employed as a Field Chemist



and Project Manager with Acurex Corporation, Chemical Waste Management and Jacobs Engineering.

4. As an On-Scene Coordinator, I am duly authorized by U.S. EPA, pursuant to 40 C.F.R. §§ 300.120 and 300.135, to direct response efforts at properties and facilities where a release or threat of release of hazardous substances, pollutants, or contaminants exists and to coordinate, direct and review the work of responsible parties and contractors to assure compliance with the National Contingency Plan (NCP), 40 C.F.R. Part 300, U.S. EPA decision documents, administrative orders, and U.S. EPA-approved plans applicable to the response.

5. As part of my duties as an On-Scene Coordinator for U.S. EPA, I review documents in the files maintained by U.S. EPA and State and local agencies, and I confer with employees of U.S. EPA, State agencies, local agencies and potentially responsible parties in order to gather pertinent facts about releases and threats of release, conditions at properties where releases have occurred or are threatened, and about persons who are potentially responsible for such releases or threatened releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*

6. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, U.S. EPA is authorized to conduct investigations, monitoring, surveying, testing, and other necessary information gathering activities at properties where U.S. EPA has reason to believe there has been or is about to occur a release of a hazardous substance, pollutant, or contaminant. Such investigations and other response activities are necessary to identify the existence and extent of a release or threat of release of a hazardous substance, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of the danger posed to public health, public welfare, and the environment.

7. I am the On-Scene Coordinator assigned to Loewenthal Metals Site. In the course of carrying out its authority under CERCLA, U.S. EPA requested assistance from the Illinois EPA in performing an assessment of the Site to determine whether it is appropriate to include the Site in the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS). Accordingly, Illinois EPA performed a pre-CERCLIS screening at the Site, and the results are documented in the Illinois EPA Screening Report. In connection with my duties as On Scene Coordinator, I have reviewed the Illinois EPA Screening Report concerning the Loewenthal Metals Site.

8. Based on my review of the materials referenced above, beginning in the 1940's, the Loewenthal Metals Corporation owned and operated a lead and zinc smelter and scrap metal facility at the Site in a mostly residential neighborhood. The Site is approximately .42 acres and it is presently vacant except for a concrete slab on a portion of the property. Directly across the street from the Site is a residential apartment complex. Railroad tracks border the east side of the property, which separate the Site from residential homes.

9. The Illinois EPA Screening Report documents the results of sampling that Illinois EPA undertook at the Site. According to the report, soil samples were taken at the Site from 12 random locations that revealed elevated levels of lead, arsenic, copper, manganese and zinc in concentrations three times above the background limitations. Based on the analytical results, soils at the Site may be contaminated with lead, arsenic, copper, manganese and zinc. The 2006 Illinois EPA assessment also noted that site access was uncontrolled and that the Site apparently was being used as a shortcut for children and adults walking to a nearby public school. The assessment also noted open dumping on the property, and that transient people erected a temporary shelter at the Site.

The absence of any fences, signs or sidewalk, the appearance of routine trespass, the residential nature of the area, and the presence of elevated levels of metals in soils create a high potential risk for human receptors, particularly children, to come in contact with lead, arsenic and other heavy metals. In my experience as an On-Scene Coordinator, such conditions may pose a threat to human health and the environment. Accordingly, the Site should be assessed further to determine the presence of a release or threatened release of hazardous substances, the extent of the risk to human health such release or threatened release may pose, and whether a response action under CERCLA is required. Such further assessment should include a return to the Site for additional sampling.

10. Based on my experience as an On-scene Coordinator, U.S. EPA previously inspected similar sites for the same type of contaminants as were found at the Site. U.S. EPA plans to inspect the Site in the same way as it inspected other vacant former industrial sites to identify whether the Site is contaminated.

11. It is U.S. EPA's policy to seek the owner's consent, if possible, before entering private property to conduct sampling. Accordingly, on or about January 5, 2012, following my assignment to the Site, I attempted to determine the current owner or owners of the Site so that consent for U.S. EPA's access to it could be obtained.

12. On April 19, 2012, in an attempt to gain written access, I sent a letter to the owner, Mr. James Connell, using his last known home address in Chicago, Illinois, as supplied by U.S. EPA enforcement personnel. In the letter, I requested access and stated U.S. EPA's reason for seeking access, and supplied my contact information as well as that of the U.S. EPA staff attorney assigned to this matter. I also provided a standard Consent to Access form, and I requested a response no later

than May 7, 2012. A copy of the letter is attached hereto as Exhibit A. To date, I have not received a response from Mr. Connell.

13. Based on my review of the Illinois EPA Site Assessment Report and based on my experience as an On-Scene Coordinator for U.S. EPA, I conclude that the presence of elevated levels of lead and other metals in the soils at the Loewenthal Metals Site may pose a threat to human health and the environment. Therefore, a further investigation of the Site is needed as follows:

- (1) Conduct a visual inspection of the property;
- (2) Take photographs of the property; and
- (3) Take surface and depth samples of Site soils using a "Geoprobe" device pursuant to a site-specific sampling plan and grid to a depth of six feet.

An X-Ray fluorescence instrument will be used to pre-screen the soil for elevated metal concentrations and samples will be sent to a laboratory for metal analysis.

14. This declaration supports an application for a warrant for access, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for U.S. EPA to enter and have continued access to the Site to conduct investigatory activities. All of these actions are authorized by Section 104 of CERCLA and will be performed to protect public health, public welfare, and the environment from all releases or threats of release of hazardous substances, pollutants or contaminants at the Site.

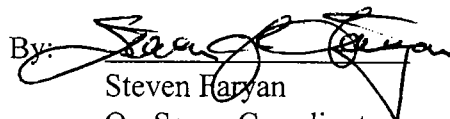
15. If a warrant for access is issued, it shall be posted at the subject property.

16. If a warrant for access is issued, I will participate in the site investigation action at the property with authorized representatives of U.S. EPA and Illinois EPA, which U.S. EPA has authorized to assist in this action.

17. If a warrant for access is issued, the investigative activities will be carried out with reasonable promptness from the date of the posting of the warrant on the property at issue. From the date that the warrant is posted, it is estimated that it will take approximately five days to schedule and mobilize personnel and equipment, perform a visual inspection at the Site, and perform sampling activities at the property.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/16/12

By: 
Steven Haryan
On-Scene Coordinator
Region 5, U.S. EPA

EXHIBIT

- A. Letter from U.S. EPA to James Connell at 1335 North Astor, Chicago, Illinois, with return receipt.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

APR 19 2012

SE-5J

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Connell
1335 North Astor Street, Apt. 5A
Chicago, Illinois 60610

Re: Request for Consent to Access at 947 West Cullerton Avenue, Chicago, Illinois

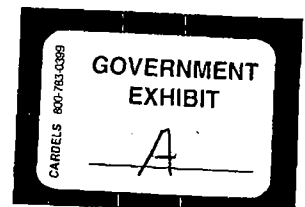
Dear Mr. Connell:

The United States Environmental Protection Agency (U.S. EPA) requests access to the real property located at 947 West Cullerton Avenue, Chicago, Illinois. Our request is made pursuant to the authority granted in Section 104(e)(3) and (4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9604(e)(3) and (4). Our review indicates that you are the owner of record of the property. Our purpose in entering the property is to determine whether a response action under CERCLA is necessary. In this respect, U.S. EPA has received information from the Illinois Environmental Protection Agency suggesting elevated levels of metals may be present in soils at this location.

We anticipate our assessment of the property will take two to three days. During the assessment, we would conduct a visual inspection of the property and take photographs. We would also take soil samples, and use a device called a "Geoprobe" to take depth samples of soils, using a grid and sampling plan. We would then prepare a site assessment report based on the information we gather. If you wish, we would give you the opportunity to take split samples from sampling locations, and furnish you with a copy of the results of sample analysis.

While Section 104(e) of CERCLA authorizes U.S. EPA to enter, at reasonable times, private property to which hazardous substances, pollutants or contaminants may have been released, it is our policy first to seek the owner's consent to entry. Accordingly, enclosed is a consent for access for your signature. Please sign this consent for access and return it to me at:

Steven Faryan
Superfund Division, SE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604



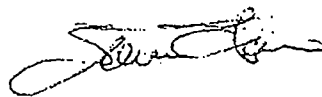
Mr. James Connell

Page 2

as soon as possible, but no later than May 7, 2012. If we do not hear from you by that date, we may treat your failure or omission to respond as a denial of consent, and we would evaluate the alternatives available to us, which include commencing a civil action for access.

You are welcome to contact me at (312) 353- 9351 or Tom M. Williams, Associate Regional Counsel, at (312) 886-0814, if you have any questions concerning this matter. Thank you for your cooperation.

Sincerely yours,



Steven Faryan
On-Scene Coordinator

Enclosure

cc (w/o enclosure:

William Ryczek (SE-5J)

Tom M. Williams (C-14J)

• Sender: Please print your name, address, and ZIP+4 in this box •

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10



UNITED STATES POSTAL SERVICE

CONSENT FOR ACCESS TO PROPERTY

Name: _____

Title: _____

Address of Property: 947 West Cullerton Avenue
Chicago, Illinois

I consent to officers, employees, contractors, and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA") entering and having continued access to the property, at the address identified above for the purpose of conducting a site assessment, including:

Conducting a visual inspection of the property;

Taking photographs of the property; and

Taking surface and depth samples of soils at the property.

I realize that these actions taken by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

This written permission is given by me voluntarily, on behalf of myself and all other co-owners of this property, with knowledge of my right to refuse and without threats or promises of any kind.

Date

Name

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
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DECLARATION OF MAUREEN E. O'NEILL

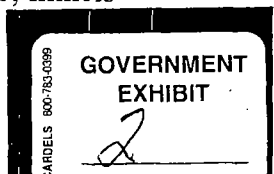
I, Maureen E. O'Neill, declare and state as follows:

1. I am currently employed as a Civil Investigator in the Office of Regional Counsel of Region 5 of the United States Environmental Protection Agency ("U.S. EPA") in its Chicago, Illinois offices. I have been employed with the U.S. EPA since December 2008.

2. One of my job duties as a Civil Investigator is to assist U.S. EPA technical personnel, including On-Scene Coordinators, in locating the owners of real property where a release or threatened release of hazardous substances, pollutants, or contaminants, and assisting in obtaining the owner's consent to access to such property.

3. The statements in this declaration are based on my personal knowledge, my experience as a Civil Investigator for U.S. EPA, knowledge from reviewing documents concerning the Loewenthal Metals Site in Chicago, Illinois, and knowledge from discussions with other employees of U.S. EPA.

4. In the course of my duties as a Civil Investigator, I was assigned to determine the identity and contact information, if any, of the owner of the Loewenthal Metals Site, which is located at 947 West Cullerton Street, parcel number 17-20-433-003-000 Cook County, Chicago, Illinois



(“the Loewenthal Metals Site,” or “Site”)(parcel number 17-20-433-003-000 also contains the address commonly known as 2006 South Sangamon Street, Chicago Illinois, which intersects West Cullerton Street at the location identified above).

5. During the week of August 27, 2012, I compared the property identification number for the property parcel at the above addresses with publicly available information, and determined that the last-known owner of the real property comprising the Site was a Mr. James J. Connell. Using the search tools available to me through the internet, I determined that Mr. Connell’s last known address was 1335 North Astor Street, Apartment 5A, Chicago, Illinois. I was unable to locate a telephone number for Mr. Connell.

6. I make this declaration to support an application for a warrant for access, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for U.S. EPA to enter and have continued access to the Loewenthal Metals Site to conduct investigatory and remedial activities.

Pursuant to 28 U.S.C. § 746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2012

By: Maureen E. O'Neill
Maureen E. O'Neill
Civil Investigator
Region 5, U.S. EPA